APPENDIX "A"

EXHIBIT 1

21-40174

Mr. Owen Garth Hinkson
#17785-038
USP Lompoc
3901 Klein Boulevard
Lompoc, CA 93436-0000

United States Court of Appeals for the Fifth Circuit

No. 21-40174
Summary Calendar

OWEN GARTH HINKSON,

Petitioner—Appellant,

versus

UNITED STATES OF AMERICA,

Respondent—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:18-CV-64

Before KING, COSTA, and HO, *Circuit Judges.*

PER CURIAM:*

Owen Garth Hinkson, proceeding *pro se*, appeals from the denial of his petition for the writ of *coram nobis* seeking to vacate his 1999 guilty plea for illegal reentry after deportation. For the following reasons, we AFFIRM.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

I.

Owen Garth Hinkson, a Jamaican citizen, pleaded guilty on June 14, 1999, to illegal reentry after deportation in violation of 8 U.S.C. § 1326(a). The guilty plea followed Hinkson's arrest after he was found with more than 100 pounds of marijuana in the car he was driving. Additionally, relevant to Hinkson's guilty plea is his 1987 guilty plea in Massachusetts state court for assault and battery of a police officer in violation of MASS. GEN. LAWS ch. 265, § 13D.[1] Based on the 1987 conviction, the district court implicitly sentenced Hinkson under 8 U.S.C. § 1326(b)(2), which states that when an alien's "removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be . . . imprisoned not more than 20 years." Hinkson's plea agreement stated: "the Defendant understands that (s)he may receive a sentence of imprisonment of not more than twenty (20) years." Hinkson's pre-sentence report stated that the statutory maximum for Hinkson's sentence was 20 years. At Hinkson's plea hearing, the court again informed Hinkson that he "could receive a sentence of imprisonment of not more than twenty years" and Hinkson stated he understood.

Hinkson's guilty plea also included an appellate waiver, which states: "With the exception of Sentencing Guidelines determinations, Defendant waives any appeal, including collateral appeal under 28 U.S.C. § 2255, of any

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[1] Hinkson argues, with some factual support, that this 1987 conviction was vacated in 2005. In a later criminal case involving Hinkson, the Northern District of Georgia found that the conviction had indeed been vacated. *United States v. Hinkson*, No. 1:17-cr-WSD-AJB, 2017 U.S. Dist. LEXIS 145486, at *3 (N.D. Ga. Sept. 8, 2017). This vacatur is one of the two theories presented by Hinkson for why the writ of *coram nobis* should be issued. However, because we hold that the petition for the writ of *coram nobis* was properly denied even if the 1987 conviction had been vacated, we need not determine whether the vacatur actually occurred.

error which may occur surrounding substance, procedure, or form of the conviction and sentencing in this case."

After pleading guilty, Hinkson was sentenced to 110 months' imprisonment, followed by three years supervised release. After serving his sentence, Hinkson was deported from the United States for the fifth time. As part of Hinkson's guilty plea, the government agreed to drop charges for conspiracy to distribute and possess with intent to distribute marijuana in violation of 21 U.S.C. § 846, and possession with intent to distribute marijuana in violation of 21 U.S.C. § 841(a)(1). Hinkson has since received two additional convictions for illegal reentry of a previously deported alien; both convictions viewed his maximum sentence as being set by 8 U.S.C. § 1326(b)(2) in light of the 1999 conviction, which Hinkson attacks with the instant petition. *Hinkson*, 2017 U.S. Dist. LEXIS 145486, at *3-4. Hinkson is currently completing his prison term based on the latest conviction (from 2017) but has completed his sentence for the 1999 conviction that is the subject of the instant case.

Hinkson bases his petition for the writ of *coram nobis* on his assertion that his conviction and sentence contemplating a 20-year maximum sentence under 8 U.S.C. § 1326(b)(2) is invalid.[2] This is so, he says, for two similar reasons: (1) the 1987 Massachusetts conviction, which served as the base aggravated felony for the enhancement, has been vacated, and (2) that the 1987 Massachusetts conviction can no longer stand as a qualifying aggravated felony under the Supreme Court's decision in *Sessions v. Dimaya*, 138 S. Ct.

[2] Hinkson additionally argues that his sentence is invalid because the indictment only stated a charge for 8 U.S.C. § 1326(a), and did not include § 1326(b)(2). This argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226–27 (1998), which held that § 1326(b)(2) "is a penalty provision" that "does not define a separate crime" and that thus "neither the statute nor the Constitution require the Government to charge the factor . . . in the indictment."

1204, 1223 (2018). "The writ of *coram nobis* is an extraordinary remedy available to a petitioner no longer in custody who seeks to vacate a criminal conviction in circumstances where the petitioner can demonstrate civil disabilities as a consequence of the criminal conviction, and that the challenged error is of sufficient magnitude to justify the extraordinary relief." *Jimenez v. Trominski*, 91 F.3d 767, 768 (5th Cir. 1996). The writ is the "criminal-law equivalent" of a "Hail Mary pass," *United States v. George*, 676 F.3d 249, 251 (1st Cir. 2012), and shall only issue "to correct errors resulting in a complete miscarriage of justice," *Jimenez*, 91 F.3d at 768. When a district court denies the writ, "we review factual findings for clear error, questions of law de novo, and the district court's ultimate decision to deny the writ for abuse of discretion." *Santos-Sanchez v. United States*, 548 F.3d 327, 330 (5th Cir. 2008), *vacated on other grounds*, 559 U.S. 1046 (2010).

We additionally must consider Hinkson's petition in light of the appellate waiver contained in his plea agreement. So long as "the waiver is informed and voluntary," a defendant can waive any and all post-conviction relief, including relief under 28 U.S.C. § 2255 (which codifies the similar writ of *habeas corpus*). *United States v. Wilkes*, 20 F.3d 651, 653 (5th Cir. 1994). While such a waiver is "most familiarly associated with attempts to secure *habeas corpus* relief," it applies with the same force to the substantially similar writ of *coram nobis* (whose primary difference is the fact that "custody no longer attaches and liberty is no longer at stake"). *George*, 676 F.3d at 257; *see also United States v. Chavez-Salais*, 337 F.3d 1170, 1172 (10th Cir. 2003) ("The conventional understanding of 'collateral attack' comprises challenges brought under . . . 28 U.S.C. § 2255, as well as writs of *coram nobis*."); *Blanton v. United States*, 94 F.3d 227, 235 (6th Cir. 1996) ("Because of the similarities between *coram nobis* proceedings and § 2255 proceedings, the § 2255 procedure often is applied by analogy in *coram nobis* cases.")

Further, we have held that legal developments post-dating the guilty plea are not sufficient grounds for vitiating an appellate waiver. *United States v. Barnes*, 953 F.3d 383, 386–88 (5th Cir. 2020); *see also Brady v. United States*, 397 U.S. 742, 757 (1970) ("[A] voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise."). Therefore, the appellate waiver is valid here. And there is ample evidence that Hinkson "read and underst[ood] his plea agreement, and that he raised no question regarding a waiver-of-appeal provision." *United States v. Portillo*, 18 F.3d 290, 293 (5th Cir. 1994). Therefore, Hinkson can only make very limited challenges to his plea agreement and sentence. His writ of *coram nobis* petition is not one of them, and so Hinkson "will be held to the bargain to which he agreed." *Id.*

Hinkson does, however, make two relevant challenges to the effectiveness of the appellate waiver and corresponding plea. The first is that he received ineffective assistance of counsel that "directly affected the validity of th[e] waiver or the plea itself." *United States v. White*, 307 F.3d 336, 343 (5th Cir. 2002). The second is that the district court violated Rule 11 by erroneously informing him during his plea hearing that his statutory maximum sentence would be 20 years (when it should have been 10 years based on his assertion that his 1987 conviction did not qualify as an aggravated felony for § 1326(b)(2) purposes). Neither argument succeeds.

A claim of ineffective assistance of counsel requires proof "that counsel's performance was deficient" and that "the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Hinkson's claim falls at the first hurdle. Hinkson's 1987 conviction was not allegedly vacated until 2005. The Supreme Court did not hold that his crime of conviction (assault and battery of a police officer) could not serve as an aggravated felony for sentencing purposes until 2018. Both events occurred

well after Hinkson's guilty plea in 1999. Hinkson's counsel was not required to predict these events when advising Hinkson on his plea deal. "Clairvoyance is not a required attribute of effective representation." *United States v. Fields*, 565 F.3d 290, 295 (5th Cir. 2009) (quoting *Nelson v. Estelle*, 642 F.2d 903, 908 (5th Cir. Unit A 1981)).

Similarly, the district court did not err by failing to glean these future developments when advising Hinkson of the "maximum possible penalty" under Rule 11. FED. R. CRIM. P. 11(b)(1)(H). Just as with the ineffective assistance of counsel standard, Rule 11 "does not require a district court to predict and apply the holdings of the Supreme Court before they are announced." *United States v. Lucas*, 282 F.3d 414, 420 (6th Cir. 2002), *overruled on other grounds by United States v. Leachman*, 309 F.3d 377, 384 n.8 (6th Cir. 2002). Rule 11 is satisfied "[a]s long as the [defendant] 'understood the length of time he might possibly receive.'" *United States v. Jones*, 905 F.2d 867, 868 (5th Cir. 1990) (second alteration in original) (quoting *United States v. Rivera*, 898 F.2d 442, 447 (5th Cir. 1990)). At the time that Hinkson made his guilty plea, he was so advised by the district court. His guilty plea, appellate waiver and all, is valid, and the district court did not abuse its discretion by finding that the waiver bars his petition for the writ of *coram nobis*.[3]

II.

For the foregoing reasons, the judgment of the district court is AFFIRMED.

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[3] Because we find that the appellate waiver in Hinkson's guilty plea bars his petition for the writ of *coram nobis*, we need not consider the alternate grounds that the district court found for its denial (namely, that it was procedurally deficient, fatally infected by delay, or that Hinkson did not suffer from collateral consequences requiring *coram nobis* relief).

21-40174

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United States Court of Appeals for the Fifth Circuit

No. 21-40174

OWEN GARTH HINKSON,

Petitioner—Appellant,

versus

UNITED STATES OF AMERICA,

Respondent—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:18-CV-64

ON PETITION FOR REHEARING
AND REHEARING EN BANC

Before KING, COSTA, and HO, *Circuit Judges.*

PER CURIAM:

The petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

APPENDIX "B"

EXHIBIT 2

OWEN GARTH HINKSON, Petitioner, versus UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
2021 U.S. Dist. LEXIS 33714
CIVIL ACTION NO. 1:18-CV-64
February 22, 2021, Decided
February 22, 2021, Filed

Editorial Information: Prior History

Hinkson v. United States, 2020 U.S. Dist. LEXIS 250482, 2020 WL 8621515 (E.D. Tex., Nov. 23, 2020)

Counsel {2021 U.S. Dist. LEXIS 1}Owen Garth Hinkson, Petitioner, Pro se, Atlanta, GA.

For United States of America, Respondent: Michelle Suzanne Englade, LEAD ATTORNEY, U S Attorney's Office, Beaumont, TX; Bradley E Visosky, Stephan Edward Oestreicher, Jr, U S Attorney's Office - Plano, Plano, TX.

Judges: MARCIA A. CRONE, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: MARCIA A. CRONE

Opinion

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Owen Garth Hinkson, an inmate at the United States Penitentiary located in Atlanta, Georgia, proceeding *pro se*, brought this petition for writ of coram nobis.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends denying and dismissing the petition.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable{2021 U.S. Dist. LEXIS 2} law. *See* Fed. R. Civ. P. 72(b).

After careful consideration, the court concludes petitioner's objections are without merit. As set forth in the Report, petitioner's petition is barred by the waiver provision contained in his written plea agreement. Further, in the alternative, petitioner's claims are without merit. "The writ is not a substitute for an appeal and will issue only when no other remedy is available and when sound reasons exist for failure to seek appropriate earlier relief." *Nowden v. United States*, 775 F. App'x 174, 175 (5th Cir. 2019) (internal quotation marks and citation omitted). Petitioner has failed to satisfy his burden of showing an error of sufficient magnitude to justify such an extraordinary remedy. *See United States v. Esogbue*, 357 F.3d 532, 534 (5th Cir. 2004). Petitioner's current petition is a continuation of his frivolous attacks on his conviction. *See United States v. Hinkson*, 72

F. App'x 972 (5th Cir. 2003). Consequently, petitioner's objections should be overruled.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 22nd day of February, 2021.

/s/ Marcia A. Crone

MARCIA A. CRONE

UNITED{**2021 U.S. Dist. LEXIS 3**} STATES DISTRICT JUDGE

FINAL JUDGMENT

This action came on before the Court, Honorable Marcia A. Crone, District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered, it is

ORDERED and **ADJUDGED** that the above-styled petition for writ of coram nobis is **DENIED** and **DISMISSED**.

All motions by either party not previously ruled on are **DENIED**.

SIGNED at Beaumont, Texas, this 22nd day of February, 2021.

/s/ Marcia A. Crone

MARCIA A. CRONE

UNITED STATES DISTRICT JUDGE

OWEN GARTH HINKSON VS. UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, BEAUMONT DIVISION
2020 U.S. Dist. LEXIS 250482
CIVIL ACTION NO. 1:18cv64
November 23, 2020, Decided
November 23, 2020, Filed

Editorial Information: Subsequent History

Adopted by, Writ denied by, Dismissed by, Motion denied by, Objection overruled by, Judgment entered by Hinkson v. United States, 2021 U.S. Dist. LEXIS 33714, 2021 WL 706719 (E.D. Tex., Feb. 22, 2021)

Editorial Information: Prior History

United States v. Hinkson, 2017 U.S. Dist. LEXIS 145486, 2017 WL 3947458 (N.D. Ga., Sept. 8, 2017)

Counsel **{2020 U.S. Dist. LEXIS 1}**Owen Garth Hinkson, Petitioner, Pro se, Atlanta, GA.

For United States of America, Respondent: Michelle Suzanne Englade, LEAD ATTORNEY, U S Attorney's Office, Beaumont, TX; Bradley E Visosky, Stephan Edward Oestreicher, Jr, US Attorney's Office - Plano, Plano, TX.

Judges: KEITH F. GIBLIN, UNITED STATES MAGISTRATE JUDGE.

Opinion

Opinion by: KEITH F. GIBLIN

Opinion

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner **Owen Garth Hinkson**, a federal prisoner proceeding *pro se*, filed this petition for writ of *coram nobis*.

The above-styled action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

The Petition

On June 14, 1999, pursuant to a plea agreement, petitioner pleaded guilty to illegal reentry after deportation before the United States District Court for the Eastern District of Texas. On April 28, 2000, petitioner was sentenced to a term of 110 months' imprisonment, followed by three years of supervised release. *See United States v. Hinkson*, No. 00-40537 (5th Cir. Feb. 1, 2001) (unpublished), *cert. denied*, 533 U.S. 922 (2001). After completing**{2020 U.S. Dist. LEXIS 2}** his sentence, petitioner was deported from the United States for the fifth time on December 21, 2006. *See United States v. Hinkson*, 744 F. App'x 656, (11th Cir. 2018). Undeterred, petitioner reentered the United States another two times and received two additional convictions for illegal reentry of a

previously deported alien. *Id.*

Petitioner brings this motion for writ of error *coram nobis* contending the court erred in finding that he had reentered the United States as a deported alien after having been convicted of an aggravated felony. Petitioner has also filed several supplemental pleadings attempting to attack his conviction by claiming the court erred in its treatment of a prior assault and battery conviction, the court violated Rule 11 during his plea hearing; and that counsel was ineffective for failing to argue his 1987 conviction was not an aggravated felony.

The Response

The respondent was ordered to show cause why relief should not be granted. In response, the respondent asserts that petitioner's claim is barred by the waiver of appeal clause contained in his plea agreement. Additionally, the respondent contends petitioner's claim is otherwise procedurally barred. Further, the respondent contends petitioner has failed to demonstrate his underlying**{2020 U.S. Dist. LEXIS 3}** conviction in this court will have collateral consequences because he would still be inadmissible given his extensive criminal history and having two other valid aggravated-felony convictions. Moreover, petitioner is not entitled to relief because even if his 1987 Massachusetts conviction was vacated, as he argues, the conviction still counted at the time of his conviction in this court.

Additionally, the respondent argues that petitioner's supplemental arguments entitle him to no more relief than his initial petition. Further, the respondent asserts that even if petitioner's contentions had merit, which they do not, a writ of error coram nobis would not be warranted because petitioner would not be admissible to the United States. Accordingly, the respondent contends the court should deny petitioner's petition.

Analysis

I. Standard of Review

"The writ of *coram nobis* is an extraordinary remedy available to a petitioner no longer in custody who seeks to vacate a criminal conviction in circumstances where the petitioner can demonstrate civil disabilities as a consequence of the criminal conviction, and that the challenged error is of sufficient magnitude to justify the extraordinary relief."**{2020 U.S. Dist. LEXIS 4}** *Jimenez v. Trominski*, 91 F.3d 767, 768 (5th Cir. 1996). However, the writ of *coram nobis* is not a substitute for appeal and should only be employed "to correct errors 'of the most fundamental character.'" *United States v. Esogbue*, 357 F.3d 532, 535 (5th Cir. 2004) (quoting *United States v. Morgan*, 346 U.S. 502, 512, 74 S. Ct. 247, 98 L. Ed. 248 (1954)). "The writ will issue only when no other remedy is available and when 'sound reasons exist[] for failure to seek appropriate earlier relief." *United States v. Dyer*, 136 F.3d 417, 422 (5th Cir. 1998) (quoting *Morgan*, 346 U.S. at 512). "In addition, a petitioner bears the considerable burden of overcoming the presumption that previous judicial proceedings were correct." *Id.*

II. Waiver

The respondent contends petitioner's current challenge to his conviction and sentence is barred by the waiver of appeal clause contained in his written plea agreement. The respondent asserts that the motion to vacate is waived because petitioner was sentenced below the statutory maximum of which he was advised. Further, the respondent contends the motion concerns the technical application of the sentencing guidelines and does not give rise to a constitutional issue.

A defendant may, as part of a valid plea agreement, waive his statutory right to appeal his conviction on direct appeal and under 28 U.S.C. § 2255, if the waiver is knowing and voluntary. *United States v.*

Wilkes, 20 F.3d 651 (5th Cir. 1994); *United States v. Melancon*, 972 F.2d 566 (5th Cir. 1992). The plea agreement will be upheld where the record clearly shows the defendant read and{**2020 U.S. Dist. LEXIS 5**} understood it and that he raised no question regarding any waiver-of-appeal issue. *United States v. Portillo*, 18 F.3d 290 (5th Cir. 1994). "[A]n ineffective assistance of counsel argument survives a waiver of appeal only when the claimed assistance directly affected the validity of the waiver or the plea itself." *United States v. White*, 307 F.3d 336, 343 (5th Cir. 2002).

Petitioner's plea agreement did contain a waiver of the right to appeal or otherwise challenge his conviction and sentence. Accordingly, the plea agreement and waiver will be reviewed to determine whether the waiver should be enforced.

Paragraph Seven of petitioner's written plea agreement provides:

> 7. With the exception of Sentencing Guidelines determinations, Defendant waives any appeal, including collateral appeal under 28 U.S.C. § 2255, of any error which may occur surrounding substance, procedure, or form of the conviction and sentencing in this case.

In this case, both petitioner and his attorney signed the plea agreement confirming that every part had been reviewed with counsel, it was understood and voluntarily agreed to, it is the entire plea agreement, that no other promise has been made or implied, and that the agreement was entered into freely and voluntarily and was not the result of force, threats, or promises other than those set{**2020 U.S. Dist. LEXIS 6**} forth in the plea agreement.

"A plea of guilty admits all the elements of a formal criminal charge and waives all non-jurisdictional defects in the proceedings leading to conviction." *United States v. Owens*, 996 F.2d 59, 60 (5th Cir. 1993). Where, as here, a defendant has pleaded guilty and waived his right to file a motion pursuant to section 2255, only a claim of ineffective assistance of counsel that "directly affected the validity of waiver or the plea itself" survives the waiver. *See White*, 307 F.3d at 343.

To the extent petitioner now claims counsel was ineffective for failing to argue his 1987 conviction was not an aggravated felony, petitioner has failed to show either deficient performance or prejudice because his prior conviction was valid at the time of his conviction in this court. Thus, any challenge by counsel would have failed under the law at the time of conviction. Therefore, petitioner's claim is without merit.

To the extent petitioner argues his petition should not be barred by the appellate waiver in his plea agreement based on the argument that 18 U.S.C. § 1101(a)(43)(F) is unconstitutional, petitioner's claims lacks merit. Petitioner's claim was raised on direct appeal and found to be without merit. *See United States v. Hinkson*, 248 F.3d 1142, 2001 WL 184823 (5th Cir. Feb. 1, 2001) (unpublished).

As part of his plea agreement with the Government, petitioner{**2020 U.S. Dist. LEXIS 7**} waived the right to appeal his conviction or sentence, as well as his right to pursue collateral relief pursuant to § 2255, concerning any error which may occur surrounding substance, procedure, or form of the conviction and sentencing in this case. Accordingly, petitioner has validly waived his right to pursue the postconviction relief sought in this action. Therefore, the Government's motion to enforce the agreement should be granted.

III. Review

In addition to being barred by the waiver in his plea agreement, petitioner's petition for writ of *coram nobis* is without merit. First, petitioner's claim is barred because he did not diligently pursue relief. Petitioner provides no explanation for the thirteen year delay in bringing his claims in 2018 following the alleged vacation of his underlying conviction in 2005.

Additionally, even if petitioner could establish that he preserved the right to bring the present writ, he has not raised a nonfrivolous issue regarding his entitlement to relief and his assertions do not support a claim for extraordinary relief. *See Dyer*, 136 F.3d 417, 423 (5th Cir. 1998) (holding that appellant had not made a showing "with the clarity requisite for *coram nobis* relief").

Further, petitioner has failed**{2020 U.S. Dist. LEXIS 8}** to show his conviction will have collateral consequences in light of his extensive criminal history. Petitioner is independently inadmissible to the United States under 8 U.S.C. § 1182(a)(9)(C) which bars the admission of any alien who has illegally reentered the United States after having been removed. Petitioner is independently inadmissible under 8 U.S.C. § 1182(a)(2)(B) which bars the admission of any alien convicted of two or more offenses for which the aggregate sentences total five or more years of confinement. Petitioner has at least five prior offenses totaling almost eighteen years confinement. Moreover, petitioner is independently inadmissible under 8 U.S.C. § 1182(a)(9)(A) which bars admission of an alien who has been removed and has been convicted of an aggravated felony. Both of petitioner's 2012 and 2017 illegal reentry convictions are aggravated felonies. Thus, petitioner has failed to show that the challenged error is of sufficient magnitude to justify the extraordinary relief of a writ of *coram nobis*. Accordingly, petitioner is not entitled to relief in this action.

Recommendation

The above-styled petition for writ of *coram nobis* should be denied and dismissed.

Objections

Within fourteen days after being served with a copy of the magistrate**{2020 U.S. Dist. LEXIS 9}** judge's report, any party may serve and file written objections to the findings of facts, conclusions of law and recommendations of the magistrate judge. 28 U.S.C. § 636 (b)(1)(C).

Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within fourteen days after service shall bar an aggrieved party from the entitlement of *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of factual findings and legal conclusions accepted by the district court except on grounds of plain error. *See Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

SIGNED this the 23rd day of November, 2020.

/s/ Keith F. Giblin

KEITH F. GIBLIN

UNITED STATES MAGISTRATE JUDGE